

## Section 6.2

### Commissioner's Discretion to Change a Decision

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**Guidance  
change  
June 2006**

This document replaces and supersedes guidance found in the Hearing Officer Roundtable Project, Section 6.2, previously titled, "County Recourse for Hearing Officer's Decision," published in May 2004. This guidance applies to administrative hearings held under the authority of FAC section 12999.5, and in some respects, to Business and Professions Code sections 8617 and 8662. This document provides guidance on a question posed at the Hearing Officer Roundtable.

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**Question posed  
and updated  
response**

- Does the county agricultural commissioner (CAC) have any recourse if he/she disagrees with the Hearing Officer's proposed decision?
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**Hearing  
process  
provides due  
process**

If requested by the Respondent, the CAC must provide a hearing before levying a penalty. The hearing establishes the facts of the case and provides due process to the Respondent (an opportunity to review and respond to the county's evidence).

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**CAC should  
agree with the  
decision  
it adopts**

The CAC, not the Hearing Officer, has the authority and responsibility to levy penalties.

The CAC is not required in all cases to adopt the Hearing Officer's decision in its entirety, *but the CAC should agree with the decision he or she adopts.*

The CAC may decline to adopt an error in the Hearing Officer's proposed decision and issue its own decision and order based on the hearing record.

This is a legitimate exercise of the CAC's authority that may avoid reversal on appeal and may be the only opportunity to correct a Hearing Officer's error. The Respondent may appeal the CAC's decision and order to the Director of the Department of Pesticide Regulation (Director) or the Disciplinary Review Committee (DRC), as appropriate.

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## Commissioner's Discretion to Change a Decision, Continued

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**Due process  
limits CACs  
discretion in  
finding of facts**

**The Respondent's right to due process of law limits the CAC's discretion to reject a finding of fact in the Hearing Officer's proposed decision.**

The CAC may overrule a Hearing Officer's findings of fact only if there is no substantial evidence to support it. The hearing creates the administrative record and provides the Respondent with an opportunity to review and respond to the county's evidence before an impartial arbiter as required by principles of due process. The record of the hearing is the sole source of facts in the case. The CAC can only rely on evidence admitted at the hearing as the basis of its decision to levy a penalty. Furthermore, deference is given to the Hearing Officer as the finder of fact. The CAC must accept the Hearing Officer's judgments about the relative weight and credibility of conflicting evidence.

Where a CAC's decision overrules a Hearing Officer's finding of fact that is supported by substantial evidence in the record, the Director of DPR or the DRC will overturn that decision.

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**CAC's  
independent  
judgment  
limited to  
application of  
law**

The CAC can use its independent judgment when overriding a Hearing Officer's interpretation of the law.

The CAC need not defer to the Hearing Officer's interpretation of the law. If the CAC believes that the Hearing Officer incorrectly interpreted the law, then it should correct that error in its final decision and order levying a penalty. If the Respondent appeals the CAC's decision on that basis, then the Director or DRC would exercise *their* independent judgment in resolving that purely legal question.

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## Commissioner's Discretion to Change a Decision, Continued

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### CACs must review record and articulate reasoning

Consider these points when reviewing the Hearing Officer's decision:

- The "substantial evidence" standard is not a high standard. The standard is whether any reasonable person could come to that conclusion of fact based on the evidence in the record. The CAC should review the entire record before making this determination.
  - Whenever the CAC overrules a Hearing Officer's legal interpretation or finding of fact, it should carefully explain its reasoning in its final decision. Letting the Respondent know the basis of the CAC's action respects its procedural rights and can avoid unnecessary expense for everyone involved. An explicitly reasoned order helps the Respondent make an informed decision about whether to appeal and, if the Respondent decides to appeal, facilitates that process.
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### Reference

Food and Agricultural Code sections 12999.5 and 12999.5(c)(7)

Business and Professions Code sections 8617 and 8662

ENF 2006-09 - Structural Pest Control Disciplinary Review Committee's Decision on Appeal of a County Agricultural Commissioner's Decision (Docket Number S-010)

ENF 2006 - 012 - Director's Decision on Appeal of a County Agricultural Commissioner's Decision (Docket Number 126)

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